96cv4849

Def

From: Samuel Issacharoff
To: rswift@kohnswift.com; sdubbin@dubbinkravetz.com
Date: 2/20/2006 3:51:43 PM
Subject: Further information

Please accept this e-mail as a response to Sam Dubbin's fax of Feb. 17, 2006. I was out of town on Friday and just received this.

I find myself at somewhat a loss as to how to respond. Your letter begins be stating that you understand my position to be that we need supply only Mr. Neuborne's total hours for 2000. As the prior e-mail shows, however, this is not my understanding of what I need to do, this is what we agreed to on our phone conference nearly two weeks ago. At that time, we agreed that I would provide the total hours for 2000 in the German case and any documents responsive to your other requests. The e-mail below provides that, as supplemented when we did indeed discover a court transcript that pertained to your request. Further, you requested time until Feb. 17, 2006 to supplement the record, which I again agreed to.

Now, on Feb. 17 you want to open the same discovery issues that we resolved on the phone call. And you do so by fax with a copy to the Court. This is a most curious way to practice. I am relatively new to this case, but sudden changes of heart after agreement by counsel with letters to the court before you have even attempted to resolve this with me is a form of federal practice that I am unfamiliar with. You invoke with great solemnity the advisory committee notes to the 2003 amendments to FRCP 23(h). Is this form of practice anticipated in the 2003 amendments to Rule 23?

The simple answer to your request is that we provided you with what seemed reasonable in a conversation of all counsel. You now request Mr. Neuborne's declaration filed with the German Foundation Fee Arbitrators, which you have been told was served in camera by agreement of all counsel, including Mr. Swift. Please provide me case authority establishing your entitlement to take discovery of counsel hours and submissions in other litigation not subject to a fee request, under amended Rule 23(h) or elsewhere, and we will consider this request.

Second, you request Mr. Neuborne's "daily time recordss for 1999 and 2000 (and 2001 if any); i.e., time periods overlapping with this fee request." I do not understand this request at all. You have Mr. Neuborne's contemporaneous time records for this case, produced as an exhibit to hie initial fee submission. If you are requesting his time actual records in the German Foundation case, I again object that this is irrelevant, outside of what we agreed to, and now untimely. But if you provide me case law establishing your entitlement to take discovery of counsel hours in other litigation that is not subject to a fee request, under amended Rule 23h) or elsewhere, we will consider this request. Finally, if your request is even broader, seeking to know the time and dates of Mr. Neuborne's visits to his doctor and his dentist, you are way out of bounds. Again, show me the case law supporting your right to invade my client's private life and I will consider the request.

I am uncertain whether I need to copy the Court now to show that your request is both unreasonable and unprofessional in that we had already reached agreement. I would appreciate as we go forward that you show the professional courtesy to contact me before dashing off missives to the Court. That, by the way, is also anticipated by the rules governing discovery issues.

Sam Issacharoff

PS: Here is the text of the e-mail confirming our agreement on what would be provided. The e-mail dates from Feb. 10.

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Please accept this e-mail as a response to factual questions raised during our conference call and in Sam Dubbin's letter of February 9, 2006.

1) The total number of hours worked by Burt Neuborne on the German cases in 2000 is 627.

2) There are no documents, transcripts or writings on conversations referenced in the Dubbin letter of 2/9/06. We do not have any record of when such conversation(s) occurred, only that these comments arose during the innumerable interactions between Mr. Neuborne and the Court.

I believe this satisfies all the requests for information outstanding.

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